



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,010	04/20/2007	Alexander Schnell	003-239	4697

36844 7590 10/07/2009
CERMAK KENEALY VAIDYA & NAKAJIMA LLP
515 E. BRADDOCK RD
ALEXANDRIA, VA 22314

EXAMINER

MEKHLIN, ELI S

ART UNIT	PAPER NUMBER
----------	--------------

1793

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

10/07/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ACERMAK@CKVNLaw.COM
CGOODE@CKVNLaw.COM
PTADMIN@CKVNLAW.COM

Office Action Summary	Application No. 10/597,010	Applicant(s) SCHNELL ET AL.	
	Examiner ELI MEKHLIN	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2 and 5-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

(1)

Applicants Remarks filed September 16, 2009, have been entered.

(2)

Response to Arguments

Applicant's arguments filed September 16, 2009, have been fully considered but they are not persuasive for the following reasons:

Applicant argues that Schnell, which deals with brazing alloys, and Budinger, which deals with alloy powder mixtures for brazing, are not analogous art by virtue of the fact that an alloy is not an alloy powder mixture and therefore, a person having ordinary skill in the art at the time of invention would not obtain any information of value that could be used to improve a brazing alloy. This argument is not persuasive. Specifically, as per the MPEP, "any need or problem known in the field of endeavor at the time of invention and addressed by the patent [or application at issue] can provide a reason for combining the elements in the manner claimed." MPEP 2141.01(a)(I) (internal quotation omitted). "Thus a reference in a field different from that of applicant's endeavor may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commanded itself to an inventor's attention in considering his or her invention as a whole." *Id.* (internal citation omitted). In this case, Budinger is such a reference as it deals with braze materials and means for improving them. Therefore, Budinger can be said to be analogous prior art that is combinable with Schnell, which deals with brazing materials.

Additionally, Applicant argues that because Schnell is silent as to the relationship of the constituents in the alloy relative to one another, Schnell does not teach the specific alloy, minus yttrium, as claimed. This argument is not persuasive. Specifically, Examiner notes that Schnell teaches an alloy composition, minus yttrium, that overlaps with or lies inside the ranges of the constituents in the presently claimed application. "In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art a *prima facie* case of obviousness exists." MPEP 2144.05(I) (internal citation omitted). In view of this, choosing a combination of elements within the ranges taught by Schnell is insufficient to patentably distinguish the claimed composition with the composition taught by Schnell, as the composition taught by Schnell covers the claimed ranges despite the absence of a specific working example. Examiner notes that Schnell is insufficient for an anticipation rejection grounded in 35 U.S.C. 102; however, for purposes of determining what would have been obvious to a person having ordinary skill in the art at the time of invention, Schnell is entirely appropriate as Schnell teaches a alloy composition covering the ranges claimed in the present application.

(3)

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHNELL et al. (U.S. Publication No. 2003/0066177) in view of BUDINGER et al. (U.S. Patent No. 5,240,491).

Art Unit: 1793

With respect to **claim 1**, SCHNELL teaches a braze alloy consisting of 10-15 wt% Cr, 10 wt% Co, 4 wt% W, 2.5-3.5 wt% Ta, 3.0-4.5 wt% Al, 1.6-2.7 wt% B with the balance Ni. Page 2, Paragraph 24, Table 1. These ranges overlap or lie inside the ranges claimed by Applicant, establishing a *prima facie* case of obviousness. See MPEP 2144.05(I). In the configuration taught by SCHNELL, when Cr is 11 wt% and Al is 4.5 wt%, Cr and Al are greater than 15 wt%. When Al is 4.5 wt% and Ta is 3.5 wt%, Al and Ta are greater than 7.5 wt%. Finally, when Cr is 11 wt% and Al is 4.5 wt%, Cr/Al is less than or equal to 3.

SCHNELL is silent as to whether the braze alloy can also contain yttrium in a wt% range of 0.17 to 0.3%.

However, BUDINGER, which deals with braze alloy powders, teaches a braze alloy that has, in one variation, a composition of cobalt, chromium, aluminum, tantalum, tungsten, boron and yttrium in a nickel base with impurities. Col. 11-12, Claim 1. Specifically, BUDINGER teaches embodiments that have 0.2 wt% or 0.3 wt% yttrium. Col. 9-10, Tables I and II. Variations of the braze alloy composition taught by BUDINGER lead to an alloy where Cr and Al is greater than 15, Cr/Al is less than or equal to 3 and Al and Ta is greater than 7.5. Col. 9-10, Tables I and II.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of invention to use a braze alloy with a yttrium content of 0.17 to 0.3 wt% because BUDINGER teaches that such a component can be successfully used in braze alloys. Specifically, a person having ordinary skill in the art would appreciate that adding yttrium to such an alloy would improve the oxidation resistance of the alloy.

With respect to **claim 2**, SCHNELL teaches that the braze alloy is braze single crystal articles made from Nickel based super alloys. Paragraph 7.

With respect to **claim 5**, SCHNELL teaches that the single crystal article can be a gas turbine component. Paragraph 22.

(4)

Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHNELL et al. (U.S. Publication No. 2003/0066177) in view of BUDINGER et al. (U.S. Patent No. 5,240,491) as applied to claims 1-2 and 5 above, and further in view of STERN (U.S. Patent No. 4,507,264).

With respect to **claim 6**, SCHNELL and BUDINGER, as combined above, are silent as to whether the braze alloy is in the form of a paste, foil, an ingredient in a blend braze paste, tape, or pre-sintered sheet.

However, STERN, which deals with brazing methods, teaches a method of brazing that includes applying the brazing alloy in paste form to a super-alloy joint, heating the joint to the brazing temperature in a vacuum furnace, followed by a post-braze heat treatment. Col. 6, Lines 1-8.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of invention to use the braze alloy in a paste form because STERN teaches that such a physical configuration of the braze alloy allows for effective brazing. Additionally, a person having ordinary skill in the art would appreciate that a braze alloy paste is particularly suited for brazing a joint, which is how STERN uses the braze alloy in paste form.

With respect to **claim 10**, STERN teaches that the braze alloy, in paste form, is applied to a super-alloy article joint and the joint is heated to the brazing temperature in a vacuum furnace, followed by a post-braze heat treatment. Col. 6, Lines 1-8. STERN does not state that the braze paste is mixed with any other additive. Additionally, STERN teaches that the braze temperature can be as high as 2150° C. Claim 3. STERN teaches that the braze alloy is particularly suitable for brazing nickel-based super-alloy articles. Col. 2, Line 1.

(5)

Claims 7-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHNELL et al. (U.S. Publication No. 2003/0066177) in view of BUDINGER et al. (U.S. Patent No. 5,240,491) as applied to claims 1-2 and 5 above, and further in view of STERN (U.S. Patent No. 4,507,264) and SCHAEFER et al. (U.S. Patent No. 5,806,751).

With respect to **claim 7**, SCHNELL and BUDINGER, as combined above, teach that the braze alloy can be used to braze super-alloy articles but are silent as to the braze alloy's physical form and whether filler material is used.

However, SCHAEFER, which deals with methods of repairing gas turbine components, teaches that it is difficult to use a brazing alloy, absent a filler material, to braze large defects in gas turbine components. Col. 1, Lines 32-35. SCHAEFER teaches that it is known in the art to use metallic alloy filler with a braze alloy to affect the repair of large defects. Col. 1, Lines 42-43. The metallic alloy filler has a

Art Unit: 1793

composition similar to the material the metallic alloy article that is being repaired, which in this case is a nickel or cobalt based super-alloy. Col. 2, Lines 20-21.

Additionally, with respect to the physical configuration of the braze alloy, STERN, as explained above, teaches that the braze alloy, when in paste form, can be effectively used to braze super-alloy articles. Col. 6, Lines 1-8.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of invention to use a braze paste and combine it with a filler consisting of cobalt or nickel super-alloy because SCHAEFER teaches that metallic filler, with a composition substantially similar to the article to be brazed, can be combined with a braze alloy to form a braze product and that such a braze product can more effectively repair large defects in nickel or cobalt-based super-alloy articles. Additionally, STERN teaches that braze pastes can be effectively used to braze, i.e. repair super-alloy articles.

With respect to **claim 8**, SCHAEFER teaches that the braze alloy, the second metallic filler material, is between 0 to 40 wt% of the entire braze product. Col. 2, Lines 31-37. This range completely covers the claimed range of 0 to 30 wt%. Where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Woodruff*, 919 F.2d 1575 (Fed. Cir. 1990).

With respect to **claim 11**, SCHNELL, BUDINGER, STERN and SCHAEFER, as combined above, teach that the braze product, which is a braze paste and a metallic filler wherein the metallic filler has the same composition of the article to be brazed, can

Art Unit: 1793

be used to braze a nickel or cobalt-based super-alloy article, such as a gas turbine component. SCHAEFER, Col. 1, Lines 11-42.

(6)

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over SCHNELL et al. (U.S. Publication No. 2003/0066177) in view of BUDINGER et al. (U.S. Patent No. 5,240,491), STERN (U.S. Patent No. 4, 507,264) and SCHAEFER et al (U.S. Patent No. 5,806,751) as applied to claims 7-8 and 11, and further in view of VAN ESCH (U.S. 6,575,349) and RAFFERTY (U.S. Patent No. 6,612,480).

With respect to **claim 9**, SCHNELL, BUDINGER, SCHAEGER and STERN, as combined above, are silent as to whether a pre-sintered braze sheet having no binder is used as a brazing product.

However, VAN ESCH, which deals with a method of applying braze to a substrate, teaches that pre-sintering braze products reduces the need for binder and/or adhesive and produces a better braze. Col. 1, Lines 60-65. Additionally, RAFFERTY teaches that a pre-sintered braze sheet (preform) is a highly effective technique that can be used to braze a product. Col. 1, Lines 45-50.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time of invention to use a pre-sintered braze sheet because VAN ESCH teaches that pre-sintering eliminates the need for binder and produces a better braze and RAFFERTY teaches that a preform, which can be a sheet, is a highly effective brazing technique.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELI MEKHLIN whose telephone number is (571)270-7597. The examiner can normally be reached on 5/4/9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1793

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ELI MEKHLIN/
Examiner, Art Unit 1793

/J.A. LORENZO/
Supervisory Patent Examiner, Art
Unit 1793